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# **REPORT OF ATTORNEY GENERAL**

**SCOTT HARSHBARGER**



***"ABUSE, NEGLECT AND MISTREATMENT IN MASSACHUSETTS  
NURSING HOMES: ENFORCEMENT AND PREVENTION"***

**PROVIDING A SAFE & SECURE ENVIRONMENT  
FOR MASSACHUSETTS NURSING HOME RESIDENTS**

November 8, 1993  
Boston, MA

139/77



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## **A Message From Attorney General Scott Harshbarger**

Abuse and mistreatment of our elders has for too long remained a discreet crime in our society. Congress has reported that one out of twenty older Americans, or more than 1.5 million persons, may be victims of abuse each year. The National Aging Resource Center (NARCEA) estimates that over two million reportable cases of elder abuse occur each year in domestic settings alone. Abuse, neglect and mistreatment in residential long-term care facilities has been no less alarming to us. Recognizing the conditions which contribute to abuse is a step in the right direction, but enforcement and prevention require our full cooperation and focused attention.

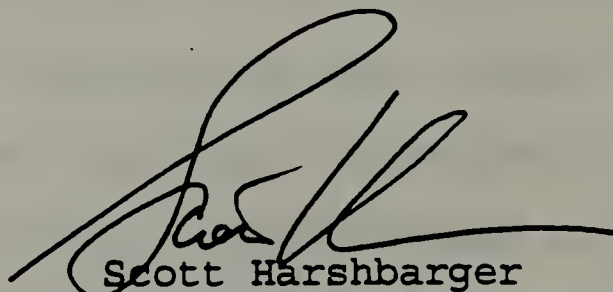
As Attorney General, I am proud to work with the Department of Public Health, Executive Office of Elder Affairs, the Massachusetts Federation of Nursing Homes and Long-Term Care Foundation to sponsor educational programs directed at rooting out abuse, neglect and mistreatment. A population of over 50,000 elders and disabled are presently cared for in long-term care facilities in Massachusetts. One-half of a \$3 billion State Medicaid budget is administered for care and treatment in these facilities. Only with cooperation, communication and education can we hope to solve the type of abuse, neglect and mistreatment, which in many instances, goes unnoticed. Identifying and reporting institutional abuse is a critical component in addressing these issues. We are encouraged by the level of



commitment of professional care givers. With the assistance of the Department of Public Health and Executive Office of Elder Affairs we have been able to effectively prosecute the abusers.

We are also hopeful that legislation drafted and proposed by my Medicaid Fraud Control Unit (MFCU) and aimed at protecting residents in long-term care facilities from abuse, neglect, mistreatment and exploitation will enhance our efforts. Under the direction of Assistant Attorney General Joyce Meiklejohn, our MFCU has significantly increased investigations and prosecutions in the past two years.

By highlighting our enforcement, education and legislative initiatives, we hope to root out instances of abuse, mistreatment and exploitation at all levels. With help from health care professionals and regulatory agencies, we can form a partnership to attain that goal.



Scott Harshbarger  
Attorney General

**MFCU ABUSE PROSECUTION REPORT**

***"ABUSE, NEGLECT AND MISTREATMENT IN MASSACHUSETTS  
NURSING HOMES: ENFORCEMENT AND PREVENTION"***

**November 8, 1993  
Boston, MA**

**MEDICAID FRAUD CONTROL UNIT (MFCU)**  
**Abuse and Neglect Prosecutions**

Attorney General Scott Harshbarger's Medicaid Fraud Control Unit (MFCU) is a federally funded law enforcement division within the Attorney General's Criminal Bureau. By federal statute and regulation, MFCU is charged with the responsibility of investigating and prosecuting complaints of abuse, neglect and mistreatment in long term care facilities receiving medicaid funding. There are 41 MFCUs nation-wide specifically charged with investigating patient abuse and neglect. These units represent the only law enforcement agencies in the country whose federal mandate is the investigation and prosecution of abuse, neglect and mistreatment in long-term care facilities.

Specifically, 42 U.S.C. Section 1396b(q)(4) requires Attorney General Harshbarger's MFCU to have:

"....procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the state plan [Medicaid Funding section], and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other state agencies for action."

Attorney General Harshbarger's MFCU receives its abuse and neglect referrals from various sources. The Department of Public Health (DPH) is the regulatory agency which licenses and oversees the state's long-term care facilities and constitutes the vast majority of abuse referrals. Other sources include:

- Executive Office of Elder Affairs
- Family, friends and relatives
- Nursing Home Administrators and care givers
- Other law-enforcement agencies



Although more than 1,000 complaints are processed each year by the Department of Public Health, only those which rise to the level of potential criminal wrongdoing are referred to the MFCU. Over a five-year period the number of referrals from DPH has gone from 303 in fiscal 1989 to 142 in fiscal year 1993. The most complaints referred to the MFCU by DPH during that period was 321 in fiscal year 1990. MFCU has received 127 DPH referrals, however, since fiscal year 1994 began on July 1, 1993.

In March of 1993, the MFCU adopted a prosecution team approach to investigating and prosecuting abuse, neglect and mistreatment referrals. Under the direction of Assistant Attorney General Joyce Meiklejohn, a team of three investigators and a single prosecutor review, prioritize and present complaints for prosecution to various district courts throughout the Commonwealth of Massachusetts.

While the abuse and neglect complaints have received increased scrutiny over the last two years, Attorney General Harshbarger's MFCU has reached out to nursing home professionals to aid them in assessing alleged instances of abuse and neglect. As part of this joint initiative, the MFCU will form an ad hoc advisory group of multi-disciplinary professionals to assist and advise the prosecution team relative to standards of conduct which give rise to criminal culpability and prosecution.

As a result of MFCU's enhanced enforcement efforts in prosecuting abuse, neglect and mistreatment, the following table represents the MFCU activity for Fiscal Year 1993 and Fiscal Year 1994 up to October 31, 1993:

FISCAL 1993 (JULY 1, 1992 - JUNE 30, 1993)

Preliminary Investigations Conducted	146
Formal Criminal Investigations Opened	27
Indictments/Complaints Issued (Individuals)	17
Total Individual Indictments/Complaints	40
Completed Prosecutions:	
Guilty Findings (15 Counts)	3 Individuals
Defendant Admissions and Continuances	
Without a Finding by the Court	<u>8</u> Individuals
	11

JULY 1, 1993 - OCTOBER 31, 1993

Preliminary Investigations Conducted	137
Formal Criminal Investigations Opened	15
Cases Closed Without Criminal Abuse/Neglect	2
Indictments/Complaints Issued (Individuals)	10
Total Individual Indictments/Complaints	20
Completed Prosecutions:	
Guilty*	1 Individual
Defendant Admissions and Continuances	
Without a Finding by the Court	<u>2</u> Individuals
	3

\*Defendant pleaded guilty to three (3) complaints of patient abuse and three (3) complaints of indecent assault.

**COMPLETED PROSECUTIONS 1992 - 1993**

***"ABUSE, NEGLECT AND MISTREATMENT IN MASSACHUSETTS  
NURSING HOMES: ENFORCEMENT AND PREVENTION"***

**November 8, 1993  
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The following is a case-by-case summary of completed prosecutions by Attorney General Harshbarger's MFCU during the previous 20 months:

1. Commonwealth v. Logan/Commonwealth v. Wyatt - Two sisters who were employed as nurses aides at a Great Barrington nursing home, together or individually abused six residents. The abuse included slapping, pinching, pulling of hair and "flipping" noses with a finger. Defendants referred to their actions as "afternoon delight". The abuse took place over a period of two months until the behavior became so outrageous that co-workers reported the defendants. The defendants were fired by the facility. Both admitted to sufficient facts, were found guilty, placed on one-year probation and ordered to perform 100 hours of community service. The defendants were unable to seek or accept employment in a long-term care facility during their probationary period (7/92).
2. Commonwealth v. Van Alstyne - Defendant was employed at a nursing home in Great Barrington. She was responsible for assisting residents in eating dinner. The victim, an 87-year-old female resident, was seated nearby. When the first resident knocked a spoon the defendant was using from her hand, the defendant became upset and began to swear. The 87-year-old victim pinched the defendant on the arm. The defendant turned to her and said "you bitch, I'm not going to take this shit anymore" and struck the resident on the arm. Defendant admitted to sufficient facts to support a guilty finding. A single count of patient abuse and assault & battery were continued without a finding for one year, despite Attorney General Harshbarger's objection. The defendant was ordered to neither seek nor accept employment in a nursing home during that year. She was also ordered to perform 100 hours of community service. (7/92)
3. Commonwealth v. Akers - A Springfield-area certified nurses aide was observed striking a 91-year-old nursing home resident on the hand as she was supposed to be placing him in bed. She was also seen striking him on the leg and lower back with an open hand. She was charged with one count of patient abuse and one count of assault & battery. The defendant admitted to sufficient facts and the Court continued the matter without a finding over Attorney General Harshbarger's objection. The case was continued for a six-month period. (7/92)
4. Commonwealth v. Sturtevant - The defendant was employed as a nurses aide at a Worcester-area nursing home. He responded to the call light of the 59-year-old victim. The victim was seated naked on the toilet and due to physical problems, required a physical assist to move about. The defendant fondled the victim's breast. The victim immediately told the defendant to leave the bathroom. She reported the incident later that day. The defendant was terminated by the facility. He was charged with one count of patient



abuse and one count of indecent assault & battery. He admitted to sufficient facts to support a guilty finding. The Court found him guilty of abuse and fined him \$500 and ordered to perform 100 hours of community service. Over Attorney General Harshbarger's objections, the Court continued without a finding for three years the indecent assault & battery count. The defendant was also ordered to court-monitored counseling. (12/92)

5. Commonwealth v. Pinckombe - An employee of an East Boston Nursing Home was observed to push a small 62-year-old mentally retarded resident. As a result of being pushed, the victim fell, slid across the floor and struck his head on a closet door. The incident was immediately reported and the defendant was terminated. He admitted to sufficient facts on a complaint alleging patient abuse and assault & battery. Over Attorney General Harshbarger's objections, the Court continued the charges without a finding for six months. (2/93)
6. Commonwealth v. St. Martin - The defendant was charged with three counts of patient abuse after allegedly striking a 91-year-old resident. A witness saw the defendant strike the victim once on the hand and twice on the ribs. The witness immediately reported the incident. The defendant was fired. By agreement, all three counts were continued without a finding for a period of one year. (5/93)
7. Commonwealth v. Earley - The defendant, a certified nurses aide, was charged with patient abuse and threatening to commit a crime (to wit: bodily harm) as a result of an incident at a Plymouth nursing home. The defendant was observed squeezing and manipulating the very sensitive legs of the 91-year-old victim. It was well known to the defendant that as a result of the victim's medical problems, her limbs were quite sore and swollen. The defendant pressed on her legs and ankles. She threatened to continue to do so unless the victim was "good". Upon the defendant's admission, the charges were continued without a finding for six months. (5/93)
8. Commonwealth v. Rushton - A night-shift LPN was charged with patient abuse and assault & battery as a result of an incident at a Northbridge nursing home. The defendant was responsible for distributing medications to residents on a unit at the home. Unable to get a 66-year-old resident to take her medication, the defendant pinched the nose and breast of the resident. When this failed to get the victim to open her mouth, the defendant spilled the medication over her face. The defendant admitted to sufficient facts. Over Attorney General Harshbarger's objections, the Court continued both counts without a finding for one year. He was ordered to perform 24 hours of community service and ordered to pay \$100 charitable contribution to an elder service group. The defendant agreed to surrender his license for one year and undergo counseling. (6/93)



9. Commonwealth v. West-Dorsett - The defendant, a certified nurses aide, admitted that she struck a 92-year-old resident over her eye. She was charged with patient abuse and assault & battery. At the time of the incident she was employed at a Brockton nursing home. Both counts were continued without a finding for six months. (6/93)
10. Commonwealth v. Guilbeault - This complaint arose as a result of an incident at a Worcester-area nursing home. The defendant was employed as a nurses aide. In feeding a 39-year-old resident, the defendant grabbed him by the hair and pulled his head back. The defendant then lowered the back of the victim's wheelchair and fed him. Given the victim's medical problems, feeding the victim in this position could have led to the victim's choking. Over Attorney General Harshbarger's objections, the Court continued the three counts of patient abuse without a finding for a period of three months. The defendant was also ordered to perform 25 hours of community service. (6/93)
11. Commonwealth v. Bruso - The defendant was accused of three incidents of patient abuse which occurred on three separate occasions. She allegedly slapped an 87-year-old female resident on the leg, slapped the same resident on the head on another occasion, and then punched an 89-year-old female resident in the jaw. The 87-year-old female suffers from senile dementia, while the 89 year old female is diagnosed with Alzheimer's disease and osteoarthritis. The first complaint was tried on September 1, 1993 in Chicopee District Court where a six-member jury found her not guilty. The remaining two complaints were scheduled for trial on October 25, 1993, at which time the defendant admitted to facts sufficient for a finding of guilty and the case was continued without a finding for six months. (10/93)
12. Commonwealth v. Ferreira - A former aide at a Lexington nursing home was observed grabbing the breasts of two elderly residents. There were three separate incidents in which he touched their breasts while they were dressed. He was terminated by the home. He admitted his guilt and was placed on probation for two years. He cannot seek or accept employment in a long term care facility during that time. (10/93)
13. Commonwealth v. McCauley - The defendant, a former nurses aide at a Springfield nursing home was convicted of patient abuse and assault and battery in Springfield District Court. The victim of the assault was a 75-year-old resident of the facility. McCauley was sentenced to concurrent six-month suspended jail terms in the House of Correction, and was placed on probation for a period of one year with the special condition that she neither seek nor accept any employment within the health care field during her period of probation. (2/92)

**PENDING PROSECUTIONS 1993 - 1994**

***"ABUSE, NEGLECT AND MISTREATMENT IN MASSACHUSETTS  
NURSING HOMES: ENFORCEMENT AND PREVENTION"***

**November 8, 1993  
Boston, MA**



The following case-by-case capsules summarize those abuse, neglect and mistreatment prosecutions currently pending in state courts. Captions make reference to the initials of the defendants awaiting trial in various state district courts:

1. Commonwealth v. TB - A certified nurses aide at a Worcester-based nursing home was fired after witnesses disclosed they observed her abusing four residents over a period of several months. The defendant was allegedly striking victims on the forehead and moving their call lights from their reach. At least two of the victims were in a coma-like state - aware of their surroundings but unable to move or speak. An additional count of civil rights violation resulting from the defendant allegedly using a racial slur during one of the assaults is also pending. (Trial pending 1/94 in Worcester District Court.)
2. Commonwealth v. SB - The defendant, an LPN and the co-defendant (see LL below) are accused of strapping a 69-year-old resident into a high back chair and pouring shampoo, juice and shaving cream over him. The incident lasted approximately one hour. The defendants attempted to take a picture of the victim. Both defendants also attempted to convince others that another resident had committed the abuse. The defendant was found guilty and placed on probation for two years. She is appealing that finding and disposition. (Appeal pending 11/93 in Stoughton District Court.)
3. Commonwealth v. LL - The co-defendant of SB above. This defendant was a certified nurses aide. (She is scheduled for trial in 11/93 in Brockton District Court.)
4. Commonwealth v. JR - This defendant was employed by an East Boston nursing home as a nurses aide. A witness saw the defendant allegedly strike a 90-year-old resident several times in the chest and stomach. After the case was tried before a judge, the defendant was convicted and sentenced to 30 days in jail. The finding and disposition is being appealed. (Trial pending 11/93 in Boston Municipal Court.)
5. Commonwealth v. DD - This certified nurses aide was employed at a Chelmsford-area nursing home. She is charged with numerous counts of patient abuse and assault & battery. Witnesses allege that the defendant kicked, slapped and threw things at several residents. She is also accused of putting a hose with running water into a victim's mouth. (Trial pending 12/93 in Lowell District Court.)
6. Commonwealth v. MA - This defendant is accused of wiping the face of an elderly resident with a feces-covered cloth. She was employed by a Lexington-area nursing home as a certified nurses aide. (Trial pending 12/93 in Concord District Court.)



7. Commonwealth v. RM/Commonwealth v. AC - These co-defendants, an LPN and CNA respectively, were indicted on counts of patient abuse and assault & battery. They are accused of placing a naked 91-year-old nursing home resident in a barrel filled with soiled linens and wheeling her around the home. (Trial pending 2/94 in New Bedford Superior Court.)
8. Commonwealth v. VA - This defendant is accused of slapping an 81-year-old resident across the face on two separate occasions. Both incidents were reported to the nursing home and the defendant was fired from her position as a nurses aide. (Trial pending 11/93 in Framingham District Court.)
9. Commonwealth v. DF - This certified nurses aide is accused of slapping a 31-year-old resident of a rehabilitation center. The victim resides at the long-term care facility because of a closed head injury. (Pre-trial Conference pending 11/93 Wareham District Court.)
10. Commonwealth v. MM - The defendant was observed slapping two nursing home residents. One victim is 85, the other 89. The alleged incidents were reported to the nursing home administrator who fired the defendant, a certified nurses aide. (Trial pending 12/93 in Quincy District Court.)
11. Commonwealth v. ZD - The defendant was fired by a New Bedford-area nursing home after she was allegedly observed striking a 92-year-old resident. She was employed as a certified nurses aide. (Pre-trial Conference pending 12/93 in New Bedford District Court.)
12. Commonwealth v. HS - The defendant is accused of touching the breasts of an elderly nursing home resident on three separate occasions. He was employed at the Worcester-based home as a certified nurses aide. (Trial pending 11/93 in Worcester Central District Court.)
13. Commonwealth v. EP - This LPN was fired from a Plainville-area nursing home after she allegedly stuffed a washcloth into the mouth of an 84-year-old resident. It is also alleged that she placed a hot lamp close to the victim's face. (Pre-trial Conference pending 11/93 in Dedham District Court.)
14. Commonwealth v. SD - This certified nurses aide is accused of slapping a resident in the course of providing care. He was fired from the New Bedford-area home as a result. (Pre-trial Conference pending 12/93 in New Bedford District Court.)
15. Commonwealth v. DF - This incident arose at a Webster-based nursing home. The defendant, a certified nurses aide, was allegedly observed punching a resident three times. She was fired by the home. (Pre-trial Conference pending 11/93 in Dudley District Court.)
16. Commonwealth v. MP - This defendant was employed by an independent agency as a phlebotomist. It is alleged she

forcefully drew blood from the victim. This was also done against the wishes of the victim. She has been fired by the agency. (Arraignment pending 11/93 in Ayer District Court.)

17. Commonwealth v. MH - A Nurse aide is charged with slapping a 78-year-old female resident in the head and punching her in the back while changing her. The resident is diagnosed as schizophrenic and moderately retarded, and she also suffers from a heart condition and diabetes. (Pre-trial Conference pending 11/93 in Holyoke District Court.)
18. Commonwealth v. KB - A Nurse aide is accused of punching a 77-year-old female resident in the chest and calling her names while bathing the victim. The resident suffers from both senile dementia and arthritis. (Trial pending 1/94 in Northampton District Court.)
19. Commonwealth v. KB - A Nurse aide is accused of throwing soapy water in the face of a 72-year-old male resident and twisting his arm while cleaning him. The resident suffers from senile dementia and depression. (Trial pending 12/93 in Springfield District Court.)
20. Commonwealth v. AS - A Nurse aide is accused of abusing three elderly residents. He allegedly harassed a 92-year-old male resident by sneaking up on him to scare him, waving his hands in the resident's face and deliberately trying to agitate him. He allegedly slapped a 77-year-old male resident and covered his mouth with his hands to prevent him from making noise. He also allegedly upset an 83-year-old female resident by taking her clothes off to prepare her for bed without advising her that he was going to do so, and then insisted on disrobing her despite the fact that she is able to do this herself. (Arraignment pending 12/93 in Great Barrington District Court.)
21. Commonwealth v. AC - A Lynn-based nursing home fired the defendant, a Certified Nurses Aide, after witnesses disclosed that she allegedly struck a 77-year-old resident twice on top of his head. This occurred during her first week at work. (Pre-trial Conference pending 12/93 in Lynn District Court.)



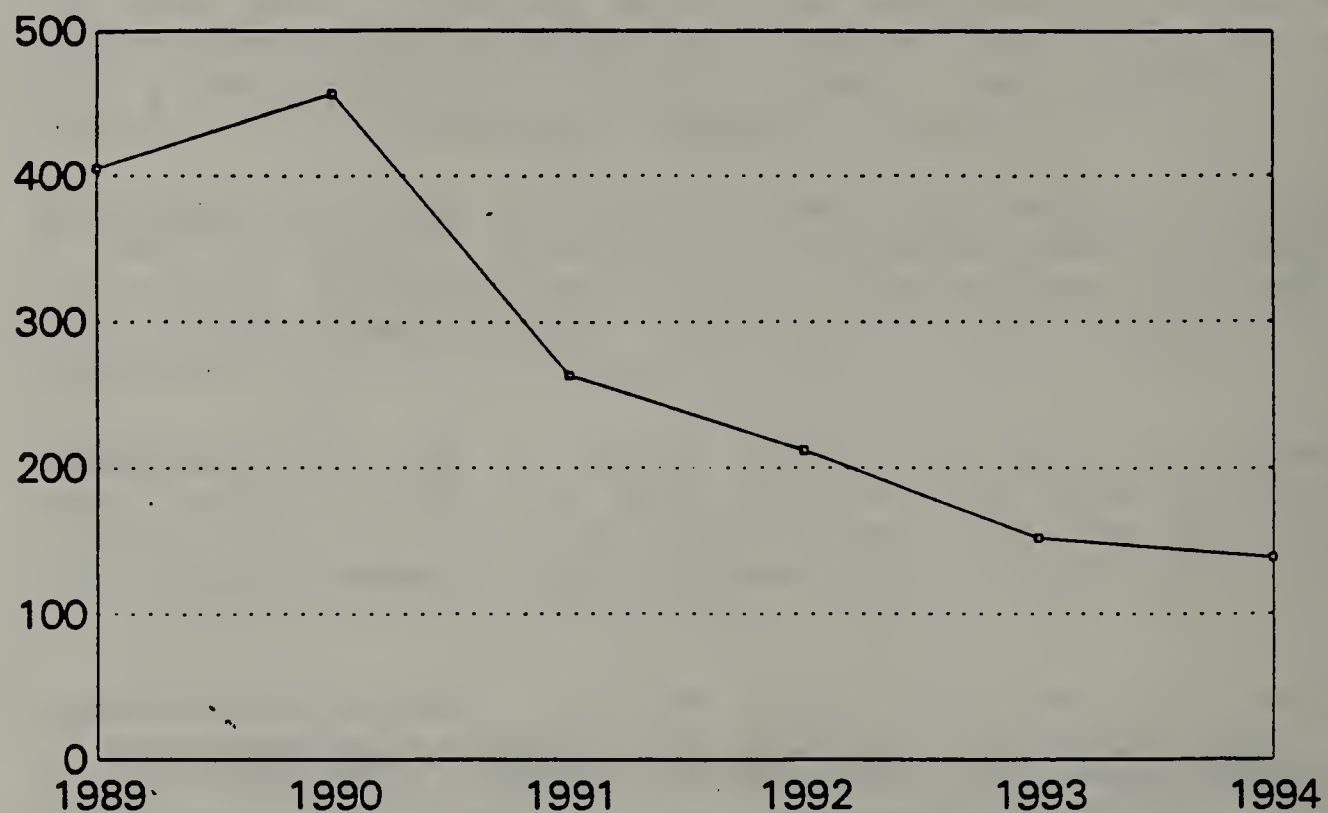
**INVESTIGATION AND PROSECUTION COMPARISONS  
(FY-1989 TO PRESENT)**

***"ABUSE, NEGLECT AND MISTREATMENT IN MASSACHUSETTS  
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# ABUSE AND NEGLECT COMPLAINTS

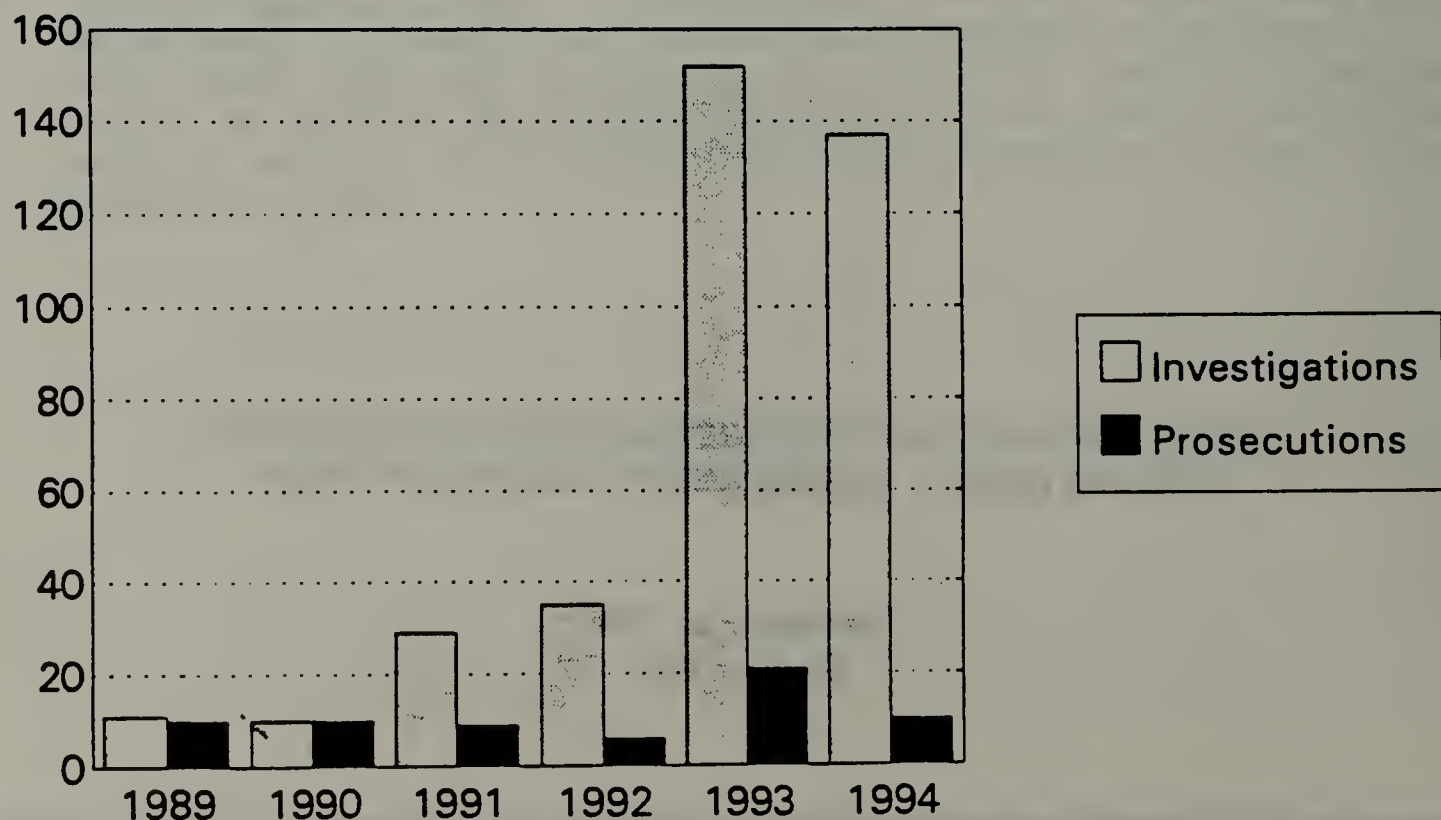
FISCAL YEAR 1989 THROUGH NOVEMBER 1, 1993\*



\* 1994 represents July 1, 1993 through October 31, 1993.

# PATIENT ABUSE PROSECUTIONS

FISCAL YEAR 1989 THROUGH NOVEMBER 1, 1993\*

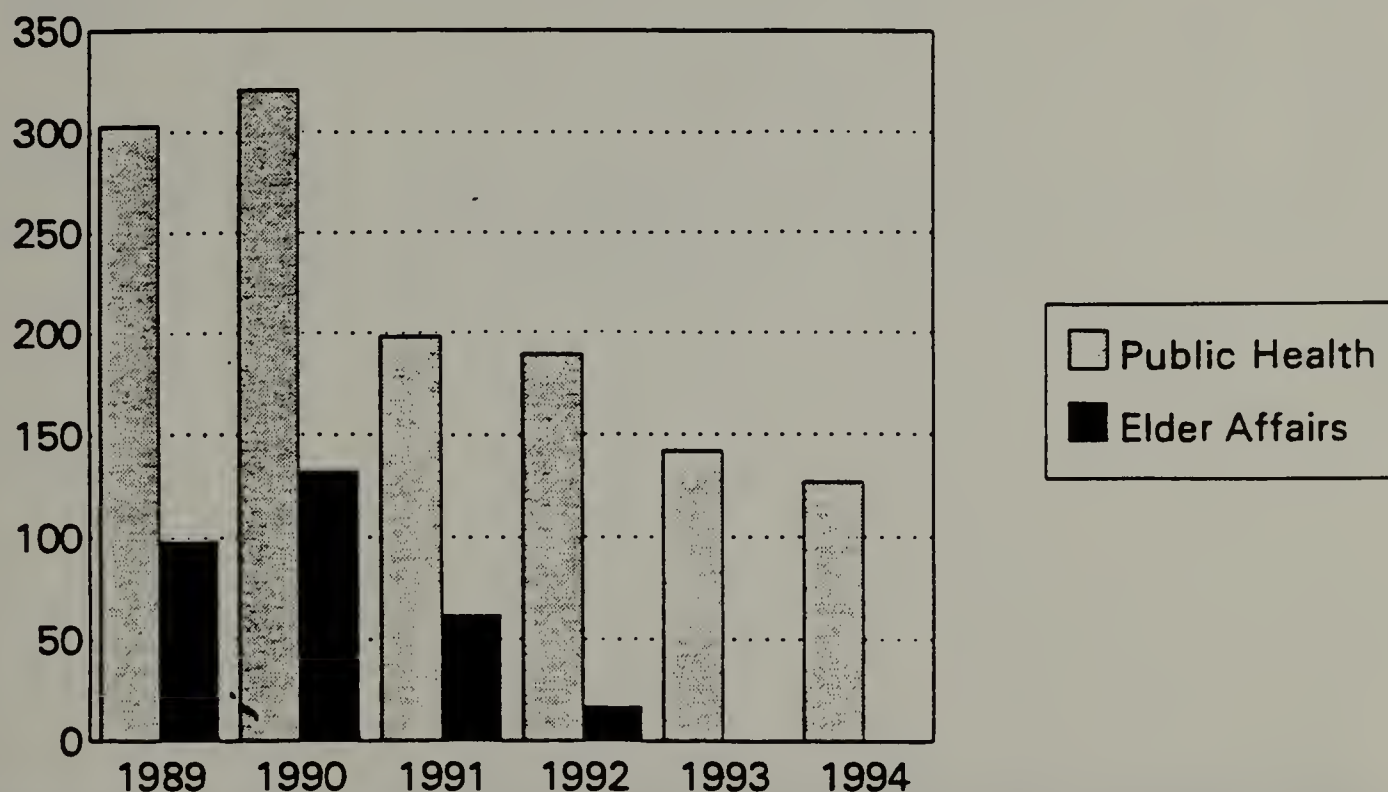


\* 1994 represents July 1, 1993 through October 31, 1993.



# MAJOR SOURCES OF REFERRALS

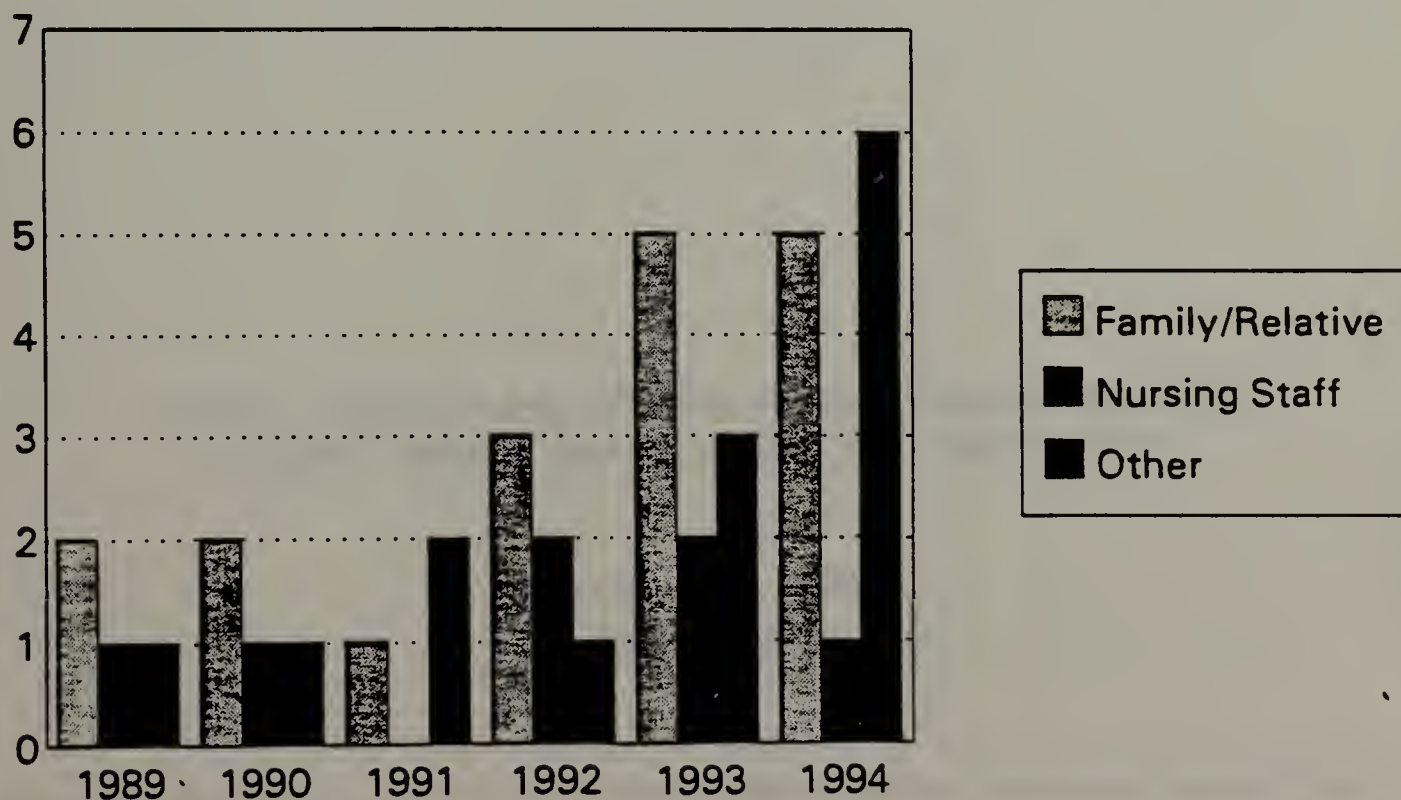
FISCAL YEAR 1989 THROUGH NOVEMBER 1, 1993\*



\* 1994 represents July 1, 1993 through October 31, 1993.

# OTHER SOURCES OF REFERRALS

FISCAL YEAR 1989 THROUGH NOVEMBER 1, 1993\*



\* 1994 represents July 1, 1993 through October 31, 1993.



**PROPOSED ABUSE, NEGLECT AND MISTREATMENT LEGISLATION**

***"ABUSE, NEGLECT AND MISTREATMENT IN MASSACHUSETTS  
NURSING HOMES: ENFORCEMENT AND PREVENTION"***

**November 8, 1993  
Boston, MA**







# The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-

## AN ACT

PROTECTING PERSONS IN LONG TERM CARE FACILITIES FROM ABUSE,  
NEGLECT, MISTREATMENT AND EXPLOITATION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

### SECTION 1.

Section 38 of Chapter 265 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking said section and adding in place thereof the following three sections.

### SECTION 38.

The Commonwealth recognizes that elders and dependent persons residing in long term care facilities as defined by section seventy-one of chapter one hundred and eleven may be subject to abuse, neglect, mistreatment, and exploitation. It further recognizes that the Commonwealth has a responsibility to protect these persons, and to deter crimes against them by the timely prosecution and punishment of the perpetrators of such crimes.

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## SECTION 38A.

As used in sections 38 through, and including, section 38B, the following words shall have the following meanings:

(1) "Purposely" means that the act is purposeful with respect to a circumstance, to a result or to conduct described by a statute defining an offense, when he or she is aware of such circumstances or hopes they exist, and when it is his or her conscious objective to cause that result or to engage in that conduct.

(2) "Recklessly" means an act that is reckless with respect to a result or to a circumstance described by a statute defining an offense when he or she is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication acts recklessly with respect thereto.

(3) "Act" means any action or omission.

(4) "Abuse" means either physical abuse or emotional abuse as defined by this section.

(5) "Physical" abuse means physical contact with a patient or resident which harms, or is likely to harm, that patient or resident. This contact includes but is not limited to slapping, punching, hitting, kicking, shoving, pushing, and unreasonable restriction of mobility.

(A) An act shall not constitute physical abuse if:

(i) The act in question occurs in the course of

carrying out a prescribed form of treatment or therapy, and both the type of act and any amount of force that may have been used are necessary in order to carry out the prescribed form of treatment or therapy; or

(ii) The act in question occurs in the course of providing care, comfort or assistance to the patient or resident involved, and both the type of act and any amount of force that may have been used are necessary in order to prevent that patient or resident from injuring himself, herself or any other person.

(iii) The physical contact in question occurs in the course of attempting to restrain the behavior of the patient or resident involved and the type and amount of force used are necessary in order to prevent that patient or resident from injuring himself, herself, or any other person.

(B) Any act which harms or is likely to harm a patient or resident and which occurs for the purpose of retaliating against that patient or resident, shall constitute physical abuse.

(6) "Emotional Abuse" includes, but is not limited to, conduct which coerces, threatens or intimidates a patient or resident, or which subjects that patient or resident to scorn, ridicule, humiliation, or failing to take reasonable measures



to prevent the occurrence of psychological injury to a patient or resident, any of which results or could result in the mental anguish or emotional distress of a patient or resident.

(7) "Exploitation" means an act which causes a substantial monetary or property loss to a patient or resident, or causes a substantial monetary or property gain to another person, which gain would otherwise benefit the patient or resident but for the act of such other person.

(A) An act shall not constitute exploitation if:

(i) The patient or resident has knowingly consented to such act unless such consent is a consequence of misrepresentation, undue influence, coercion or threat of force; or

(ii) The monetary or property gain to another is a bona fide gift by a patient or resident.

(8) "Harm" includes, but is not limited to, death, physical injury or psychological injury, and/or unreasonable restriction of mobility or communication.

(9) "Isolation technique" means any method of physically segregating a patient or resident from other persons or restricting a patient or resident's opportunities to interact or communicate with other persons.

(10) "Mistreatment" includes, but is not limited to any use of medications, isolation techniques, or restraints which harms, or is likely to harm, a patient or resident, or which the patient or resident expressly refuses.

(A) The following shall not constitute mistreatment:

(i) Use of an isolation technique for the purposes of preventing a documented, contagious disease from spreading to other persons, as long as this technique is the least restrictive available method of preventing the spread of that disease, and reasonable care is exercised in connection with the use of that technique; or

(ii) Use of a particular medication, isolation technique or restraint in the course of carrying out a prescribed form of treatment or therapy, despite a patient or resident's refusal of such treatment, if such use has been authorized by a Court of competent jurisdiction in accordance with applicable law; or

(iii) Use of a particular medication, isolation technique or restraint for the purpose of preventing a patient or resident from engaging in behavior which may injure him or her or injure another person, as long as the particular use in question is the least restrictive available alternative which will be effective in preventing such harm and reasonable care is exercised in connection with that use.

(11) "Neglect" means the failure of a facility or individual to provide treatment or services necessary to maintain the

health or safety of a patient or resident, as evidenced by a deterioration in the patient's or resident's physical, mental or emotional condition.

(A) Notwithstanding the provisions of the preceding paragraph, a patient or resident shall not be considered neglected for the sole reason that he or she relies on or is being furnished treatment in accordance with the tenets and teachings of a well recognized church or denomination by a duly-accredited practitioner thereof.

(12) "Restraint" means any physical, chemical or mechanical method or restricting a patient or resident's ability to move all or part of his or her body or communicate with other persons.

(13) "Treatment or service" means any appropriate medical, dental, nursing, dietary, physical therapy, pharmacological, rehabilitation, psychological, speech, audiological or other treatment or service.

#### SECTION 38B.

Any person who either purposely or recklessly abuses, mistreats, neglects or exploits a patient or resident of a long term care facility required to be licensed under section seventy-one of chapter one hundred and eleven, shall be punished by imprisonment in state prison for not more than five years or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.



## **CONCLUSION**

***"ABUSE, NEGLECT AND MISTREATMENT IN MASSACHUSETTS  
NURSING HOMES: ENFORCEMENT AND PREVENTION"***

**November 8, 1993  
Boston, MA**

## CONCLUSION

Today's conference, "Keeping Nursing Homes Safe" is an important step towards eliminating instances of neglect in our nursing homes. Joining the Massachusetts Federation of Nursing Homes, Department of Public Health and Executive Office of Elder Affairs in this unique partnership will go a long way towards maximizing our resources to achieve significant results. Our hope is that through a series of educational programs across the state we can reduce the number of complaints for prosecution and improve the quality of life and dignity of our older Americans who reside in these facilities.





